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In The

Supreme Court of the United States

No. 1050.

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,

Petitioners and Appellants Below,

v.

SECOND NATIONAL BANK AND TRUST COMPANY, of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,

Respondents and Appellees Below.

(No. 8336.)

RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

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OPINIONS OF COURTS BELOW.

The opinion of the United States District Court (Honorable Arthur J. Tuttle, District Judge) was not printed in the Federal Supplement because the case involves simply a question of fact, decided adversely to the appellants, but the Court's Findings of Fact and Conclu-

sions of Law are found R. 89 to 98 inc., and his final judgment is found R. 99 and 100.

The opinion on appeal is found in *Van Auken et al. v. Second National Bank et al., 117 Federal Reporter (2d Series), pages 938 and 939,* being a *Per Curiam* opinion by the Circuit Court of Appeals, Sixth Circuit (Hicks, Allen and Martin, Circuit Judges).

JURISDICTION.

The application for a Writ of Certiorari is based upon Section 240 (amended) of the Judicial Code. The respondent knows of no special or important reason why the Writ of Certiorari should be granted, as the case is of importance only to the litigants themselves, and is controlled by questions of fact.

STATEMENT OF THE CASE.

The United States District Court for the Eastern District of Michigan, Northern Division, entered a final judgment in this cause on December 13, 1938, reciting the findings of fact and conclusions therefrom, that on March 11, 1920, C. K. Eddy & Sons and Lila Eddy Doebler, counterclaimants' decedent, while of sound mind entered into an agreement in writing, free from fraud, overreaching and unconscionable conduct, for a valuable consideration, by which all asserted claims of counterclaimants were completely extinguished and released unto C. K. Eddy & Sons.

The District Court further found that this agreement, together with an earlier agreement in 1908 constituted a complete release and extinguishment of the claims asserted by counterclaimants.

This judgment is found R. 99 and 100.

The Circuit Court of Appeals, Sixth Circuit, on February 14, 1941, in its opinion *(117 Federal Reporter (2d Series) 938 at 939)* said:

> "We find in the record abundant substantial evidence to support the findings of fact of the District Court upon which judgment dismissing the counterclaims was based.
>
> It appearing, further, from the record that no reversible error was committed by the District Judge, the final judgment of the District Court entered December 13, 1938, is in all respects affirmed."

The District Court decided two controlling questions of fact, both in favor of the appellees. He states them R. 89 and 90.

STATEMENT OF QUESTIONS INVOLVED.

1. Was the agreement between C. K. Eddy & Sons and Lila Eddy Doebler, of date March 11, 1920, honestly, fairly and uprightly made and entered into while Lila Eddy Doebler was of sound mind, for a valuable consideration? If it was, it is a bar to the counterclaims.

The District Court held as a fact that the agreement was executed while Mrs. Doebler was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct (R. 89-99).

2. Was the agreement between W. S. Eddy and Lila Eddy McCurdy (later Doebler), of date January 30, 1908, honestly, fairly and uprightly made and entered into while Lila Eddy McCurdy (Doebler) was of sound mind, for a valuable consideration? If it was, it is a bar to the counterclaims to March 1, 1920.

The District Court held as a fact that the agreement was executed while she was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct (R. 89-100).

STATEMENT OF FACTS.

Lila Eddy, the sister of Walter and Arthur Eddy, a daughter of Charles K. Eddy, was married three times,—first, to Merrill B. Mills, of Detroit, in 1899 (R. 353, 129), whom she divorced in 1907. Then she became Mrs. John T. McCurdy, of Corunna, Michigan,—divorced,—and married on December 7, 1912, to Valentine S. Doebler, who survived her, and is now living in Baltimore, Maryland (R. 216, 139, 64-65, 53, 18).

Lila Eddy, Lila Eddy Mills, Lila Eddy McCurdy and Lila Eddy Doebler is the same woman (R. 273), and her only child is co-counterclaimant and defendant Cynthia Mills Cleveland (R. 4) (Cynthia's father being Mr. Mills, and she having married Mr. Cleveland).

Lila Eddy Doebler, the mother of Cynthia Mills Cleveland, and sister of Walter (R. 10) and Arthur (R. 5), died May 10, 1938, in Baltimore, Maryland (R. 4), while this cause was pending, and Howell Van Auken, claiming to be her ancillary administrator in Michigan, thereafter filed one of these counterclaims (R. 1).

The plaintiff and respondent, Second National Bank & Trust Company of Saginaw, Michigan, is the trustee of a trust created by the ninth paragraph of the last will of Arthur D. Eddy, deceased.

The defendant and respondent, C. K. Eddy & Sons, is a Michigan corporation, originally organized in 1893, and owns real estate, stocks, bonds and other securities, and is engaged in a variety of businesses (R. 355-356).

Intervener Mercantile Trust Company of Baltimore, Maryland, formerly Mercantile Trust & Deposit Company of Baltimore, Maryland, is the surviving trustee of all of the estate of Lila Eddy Doebler (R. 19).

The defendant and respondent, Charlotte Eddy Morgan, is the widow of Arthur D. Eddy, and is now married to Mr. Morgan (R. 6).

Walter S. Eddy died August 4, 1918 (R. 140). He had been the president of C. K. Eddy & Sons (R. 181).

Arthur D. Eddy died April 22, 1925 (R. 350). He had been vice-president (R. 183), and treasurer, and, after his brother's death, became president of C. K. Eddy & Sons (R. 194).

Agreement Of 1920 (R. 33, R. 235).

In 1920, after the death of Walter S. Eddy, an agreement was entered into between Lila Eddy Doebler and C. K. Eddy & Sons. Mrs. Doebler was living in Baltimore, Maryland (R. 353). *This agreement was signed March 11, 1920,* and is found at pages 33 and 235 of the record, and completely settles all matters between Mrs. Doebler and C. K. Eddy & Sons. It was drawn by her lawyer and the corporation's lawyer (R. 220). It is a complete release of the corporation. Paragraph 7 thereof is an assignment to C. K. Eddy & Sons of:

> (a) All her right, title and interest in and to the estate of Walter S. Eddy, deceased, and the 9,375 shares of the capital stock of C. K. Eddy & Sons included in his inventory.

(b) All claims against the estate of Walter S. Eddy.

(c) All her right, title and interest in and to the corporation, C. K. Eddy & Sons, its property and assets.

(d) All claims against C. K. Eddy & Sons.

(e) All claims against Arthur D. Eddy.

(f) All claims against the estate of Walter S. Eddy or against Arthur D. Eddy or against C. K. Eddy & Sons, growing out of the agreement of January 30, 1908.

Paragraph 11 is an acknowledgment that Mrs. Doebler has had an opportunity to examine the affairs of C. K. Eddy & Sons, and that her husband and her attorney have examined into the value of the property and assets of the estate of Walter S. Eddy and into the property and assets of C. K. Eddy & Sons (R. 39).

This is the agreement that the United States District Court found free from fraud, and barred Mrs. Doebler's administrator's claims. The Circuit Court of Appeals, Sixth Circuit, found abundant substantial evidence to support the findings of fact of the District Court.

The agreement is signed by Mrs. Doebler and by C. K. Eddy & Sons, by Arthur D. Eddy, its president, and by George L. Humphrey, its secretary. Mrs. Doebler signed in the presence of J. LeRoy Hopkins, her attorney, and V. S. Doebler, her husband (R. 40).

Mrs. Doebler and her husband were in Saginaw on June 12, 1919 (R. 224). Her attorney, Mr. J. LeRoy

Hopkins, and her husband, were in Saginaw July 25, 1919, and stayed until July 27, 1919 (R. 224-225, 489-490). The actual value of Walter Eddy's stock was worked out from figures secured by them (R. 254).

On September 8, 1919, Mrs. Doebler (R. 250) wrote Mr. Eddy with reference to a sale of her interests in Saginaw. Mr. Eddy answered the letter, and there then follows an exchange of letters between the two, which are found in the record, pages 250 to 271, inclusive.

These letters show that she wanted one million dollars for her interest, but finally compromised on securities worth, at par, $800,000.00; that these securities offered were the safe, gilt-edged investments of E. K. Eddy & Sons; and on December 1, 1919, she was ready to close.

Arthur D. Eddy did not offer to purchase her stock (R. 255). On December 15, 1919, she again reopened the matter (R. 263), stated her reasons why she wished to have the matter concluded quickly, and informed her brother that her attorney was going to prepare a deed of trust.

The testimony is undisputed that from April 19, 1919, to April, 1920 (R. 233), she was no invalid and under no disability whatsoever. The letters of her husband, Mr. Doebler (Exhibit 14, Errata, page 803, at 807, No. 8366) of her daughter, Cynthia Mills Cleveland (R. 272), establish this beyond question. She executed a trust agreement in 1925 (R. 350), and took the benefits thereunder up to the time of her death (Exhibit 12, page 915, Vol. II, No. 8366). Her will, made in February of 1935, was allowed (R. 5). It was during the best period of her life, according to her husband, that she entered into the agreement with C. K. Eddy & Sons, resulting in the sale of

her interest in the corporation, and her letters so indicate (Exhibit 14, Errata, page 807, No. 8366).

Stock Of Walter S. Eddy.

Walter S. Eddy, at the time of his death, was the owner of 9,375 shares of stock in C. K. Eddy & Sons (R. 43).

The corporation C. K. Eddy & Sons was formed in 1893 (R. 355), with a capitalization of $250,000.00 (R. 356), consisting of 25,000 shares of stock (R. 356), with a par value of $10.00 per share (R. 35), which stock was held as follows:

	Shares	
Charles K. Eddy	5,000 (141)	Certificate 2
Walter S. Eddy	5,000 (141)	Certificate 3
Arthur D. Eddy	5,000 (141)	Certificate 4
Lila Eddy	5,000 (141)	Certificate 6
C. Kirke Eddy	5,000 (141)	Certificate 5

In November, 1900 (R. 355), C. Kirke Eddy died, and by agreement his 5,000 shares were distributed equally between the other stockholders, after which the stock was held as follows (R. 143) (Certificates 13, 14, 15, 16, 23, 24, 25, 26):

Charles K. Eddy	6,250 shares	
Walter S. Eddy	6,250 shares	
Lila Eddy Mills	6,250 shares	
Arthur D. Eddy	6,250 shares	(Cert. No. 19 (R. 144) and Cert. No. 6 (R. 141))
	25,000 shares	

Charles K. Eddy, the father, died May 9, 1901 (R. 353), and, according to his will (Exhibit 48 (R. 281)), the stock held by him was to be apportioned as follows:

Walter S. Eddy	2/5
Arthur D. Eddy	1/5
Lila Eddy Mills	1/5
C. Kirke Eddy	1/5

The will further provided that in case any of his children passed away before his death, that such portion of his estate bequeathed to said deceased child should be divided among the surviving children in the proportion above stated.

C. Kirke Eddy died before his father, and left his father 1,250 shares of stock, as above pointed out, which, on the father's death, was divided, along with the father's original 5,000 shares, as follows:

Walter S. Eddy (146, 144) Certificates Nos. 23 and 16	½	2,500 shares (original share of father (Cert. No. 2))
		625 shares (Kirke's to his father)
		3,125 shares
Arthur D. Eddy (146) Certificates Nos. 25 and 26	¼	1,200 shares (original share of father (Cert. No. 2))
		312½ shares (Kirke's)
		1,562½ shares
Lila Eddy Mills (147) Certificate No. 31	¼	1,200 shares (original share of father (Cert. No. 2))
		312½ shares (Kirke's)
		1,562½ shares

The ownership of the stock would then be as follows:

Walter S. Eddy:	5,000 plus 1,250 plus 3,125	9,375 shares
Arthur D. Eddy:	5,000 plus 1,250 plus 1,562½	7,812½ shares
Lila Eddy Mills:	5,000 plus 1,250 plus 1,562½	7,812½ shares
		25,000 shares

See R. 158, 35, 264, 166, 167, 168, 169.

Agreement Of 1908 (R. 159-161, R. 53-55).

In 1908, Lila's 7,812½ shares were purchased by Walter S. Eddy (R. 158, 53). These shares of stock were standing in the name of Walter at that time, having been transferred to him in 1907 (R. 150). There was pending in 1907 a divorce action between Mrs. Doebler (then Mrs. Mills) and her first husband (R. 139, 65). By the terms of the agreement of 1908, Walter S. Eddy purchased all of Lila Eddy (Mills) McCurdy's stock, paying her $47,953.85 (R. 67, 65, 236), and guaranteeing her an annuity for life of $15,000.00 a year. This contract is found on pages 53, 54 and 55 of the record.

In paragraph 1, Lila Eddy McCurdy (for she was no longer Mrs. Mills, and had married Mr. McCurdy) sells, assigns, transfers and conveys to Walter S. Eddy all of her interest in her stock in C. K. Eddy & Sons.

In paragraph 2 Walter S. Eddy undertakes to pay her $10,000.00 for a home, and the sum of $1,250.00 each and every calendar month during her natural life, and assumes and agrees to pay all of her obligations to C. K. Eddy & Sons, and to pay and discharge all of her obligations with respect to the annuities provided for in her father's will, and all decrees and judgments against his estate.

The agreement is signed by Mrs. McCurdy and Mr. Eddy, in the presence of John T. McCurdy and P. Glynn, and Mr. McCurdy consents to the settlement. Mr. McCurdy was her husband, a lawyer of Corunna, and Mr. P. Glynn was the partner in the firm of Eddy & Glynn, owning an undivided one-half interest therein.

The agreement of 1908 was likewise found free from fraud and overreaching by the District Court, and the Circuit Court of Appeals found abundant substantial evidence to support the findings.

In 1914, Walter S. Eddy turned over his interest in this contract to C. K. Eddy & Sons, and directed that the corporation carry it out. His instructions are contained in a letter, Exhibit 17, found on page 158 of the record. C. K. Eddy & Sons assumed the payments, gave Mr. Walter S. Eddy credit for the amounts that he had paid out (R. 285-286), and the stock was treated as treasury stock (R. 281). An account was opened up for treasury stock and the dividends declared paid to C. K. Eddy & Sons (R. 57-58). This account is Exhibits 49 and 50, and appears at pages 281, 282 and 283, of the record. The payments were so made until March, 1920. The stock acquired from Lila in 1908 and standing in Mr. W. S. Eddy's name was transferred to treasury stock (R. 147) (Cert. 31).

The inventory of Mr. Walter S. Eddy's estate shows that he was the owner of 9,375 shares (R. 43), which he obtained from his original investment (R. 141), his father's estate (R. 146) and his brother Kirke's estate (R. 146). Mrs. Doebler was entitled to one-half of it, viz: 4,687½ shares, which were purchased by C. K. Eddy & Sons and retired in the same manner (R. 147) (Certificate No. 35). Thus, one-half of the 25,000 shares was retired, leaving Arthur D. Eddy the owner of the remaining 12,500 shares (R. 154, 284, 58). By inheritance and purchase he became the holder of all the stock.

Consideration For 1920 Agreement.

The consideration for the agreement of March 11, 1920, is as follows:

Securities and notes, totaling (market value) (R. 44-45, 223)	$760,000.00
Annuity .....$228,000.00 (R. (283)	
½ W. S. Eddy .. 532,000.00	
One-half of federal estate tax (R. 283).....	80,684.28
One-half of Michigan Inheritance Tax (R. 348, 283, 252)	6,421.01
	$847,105.29

Mrs. Doebler also received the services of her brother as administrator (R. 252) without charge, and paid no part of the expenses in the matter of the tax appeal, or the fees of the attorneys. She received bonds, stocks and cash, of the par value of $800,000.00, and of the market value of $760,000.00 (R. 223).

The government securities, municipal bonds and other investments were the safe investments of the corporation, C. K. Eddy & Sons. There was left to the corporation C. K. Eddy & Sons the real estate and speculative investments (R. 253, 44-45). That this was satisfactory to Mrs. Doebler, that she knew why it was done, and that she was satisfied to take the safe, conservative investments, and leave the company with the less desirable assets, appears from her letter of September 23, 1919 (R. 253), as follows:

"I realize that in offering to settle up with me on

the basis of $800,000 in such securities as those listed in the memorandum which you gave to Valentine and Mr. Hopkins, you are making what occurs to you to be a fair division, and I appreciate the fact that you have offered to give me the securities which have a present market value, and which are perfectly safe investments, and that you have retained the securities which may fluctuate in value and which have the element of chance so that the owner may lose or gain." * * *

In the letter of October 13, 1919, Mrs. Doebler said (R. 257):

"Again referring to your letter of the 2nd instant, I realize that the suggestion that you buy out my entire interest in Walter's estate and in C. K. Eddy & Sons originated on my part, and neither did I intend to intimate in my letter that you had made me a definite proposition."

In a letter of December 1st, 1919, Mrs. Doebler says (R. 261):

"In my former letters I tried to persuade you to pay me an even million dollars in settlement of my interest in Walter's estate and my annuity of $15,000, but I suppose you feel that the tentative suggestion of $800,000 as represented by the paper you gave Mr. Hopkins, is your final conclusion as to a fair division, and as I am anxious to get this matter closed, I have come to the conclusion to close the matter on the basis of your conference with Valentine and Mr. Hopkins and the list of securities submitted by you."

She also received her money on deposit,—$38,278.56 (R. 69).

Book Value Of C. K. Eddy & Sons (R. 340).

The books of C. K. Eddy & Sons were kept on a cost basis, and nothing was shown there as a profit or loss until the asset had been sold (R. 349-350, 171).

On January 1, 1908, the book value of C. K. Eddy & Sons was $1,478,481.50. On January 1, 1919, the book value was $3,327,687.89. On January 1, 1920, the book value was $3,598,727.80.

The stock (9375 shares) of C. K. Eddy & Sons belonging to Walter S. Eddy was appraised (R. 43) in the Probate Court of Saginaw County as of August, 1918, at $1,406,250.00. Mrs. Doebler and Arthur D. Eddy were the sole heirs of Walter S. Eddy, and shared equally (R. 297, 33).

Receipts Under 1908 Agreement.

Under the agreement of 1908, Mrs. Doebler received $458,715.10, as follows:

Jan. 30, 1908. Balance Lila E. McCurdy account (R. 284, 67)	$ 37,953.85
Payments, February to December, 1908, incl. (R. 276)	13,750.00
Check for house (R. 35, 66, 53)	10,000.00
1909 payments on contract (R. 35, 276)	15,000.00
1910 payments on contract (R. 276)	15,000.00
1911 payments on contract (R. 276)	15,000.00

1912 payments on contract (R. 276).....	15,000.00
1913 payments on contract (R. 276).....	15,000.00
1914 payments on contract (R. 276, 281)....	15,000.00
1915 payments on contract (R. 276, 282)....	15,000.00
1916 payments on contract (R. 276, 282).....	15,000.00
1917 payments on contract (R. 275, 282).....	15,000.00
1918 payments on contract (R. 275, 282).....	15,000.00
1919 payments on contract (R. 275, 283)....	15,000.00
January, February and March, 1920, payments (R. 283, 275)	3,750.00
May 10, 1920 (based life annuity Mrs. Doebler at age of 50 years) (R. 283, 348).....	228,261.25
	$458,715.10

Summary Of Moneys Paid Mrs. Doebler From C. K. Eddy & Sons, During Her Life.

Mrs. Doebler (then Mrs. Mills), after her first marriage left Saginaw, Michigan, and was living in Detroit (R. 353, 356). She contributed nothing to the upbuilding of C. K. Eddy & Sons (R. 267). For forty years Mr. Arthur D. Eddy had given the best he had to offer to C. K. Eddy & Sons (R. 267) and had withdrawn only sufficient funds for a modest living (R. 59-60).

Mrs. Doebler's original interest in the corporation was a gift to her at the request of Walter (R. 267). Walter and his father each owned one-half of the original partnership, which became the corporation C. K. Eddy & Sons (R. 355). Walter devoted his life to the family company, at modest compensation (R. 59-60). Lila acquired her other interests by inheritance from her father (R. 158), from her brother, Kirke (143), and

from her brother, Walter (R. 34, paragraph 3). She received from C. K. Eddy & Sons during her lifetime the following sums of money:

	Under contract of January 30, 1908:		
Jan. 30, 1908.	Amount transferred from Lila E. Mills (McCurdy) account	$36,216.66	
Jan. 30, 1908.	Account transferred from Mrs. J. T. McCurdy account		8,262.81
Jan. 30, 1908.	Amount credited to Lila E. McCurdy's account as per agreement with W. S. Eddy..	10,000.00	
Jan. 30, 1908.	Balance assumed by W. S. Eddy per agreement Jan. 30, 1908	$37,953.85	
	Annuity paid by W. S. Eddy and assumed by C. K. Eddy & Sons (286, 281)	92,500.00	
	Paid by C. K. Eddy & Sons (281-282-283)....	90,000.00	
	Received under March 11, 1920, agreement: Market value of $800,000 par value (223)	760,000.00	
	Received under Arthur D. Eddy's will (Exhibit 12, Vol. II, No. 8366)	377,484.99	
		$1,357,938.84	

Mrs. Doebler paid no estate tax or inheritance tax, attorney fees or administration expenses (approximately $100,000) on the interest she received from Walter S. Eddy's estate. She received his personal effects (R. 441). She left one child, Cynthia Mills Cleveland (R. 19). Mr. Arthur D. Eddy gave to that child one-sixth of his stock in C. K. Eddy & Sons (Will, pages 9 and 10, paragraph ninth (e), Vol. 1, No. 8366), worth at his death $600,000.00 (page 26, Vol. I, No. 8366).

Lila Eddy Doebler made no complaint about her brothers in her lifetime. She regarded them with affection, trust and confidence (R. 211, 223).

ARGUMENT.

The District Court found as a fact that the agreement of March 11, 1920, was made and entered into by Lila Eddy Doebler while of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and fully and completely extinguished any and all asserted claims of counter-claimants, and that the agreement of January 30, 1908, likewise was entered into while she was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and bars all claim (R. 89-100).

The United States Circuit Court of Appeals found abundant substantial evidence to support this finding.

> "The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision, *Texas & N. O. R. Company v. Brotherhood of Railway & S. S. Clerks, 281 U. S. 548 at 558*" * * *. *Virginian Ry. Company v. System Federation No. 40, 300 U. S. 515.*

Rule 52, *Findings by the court, Rules of Civil Procedure* for the District Courts of the United States:

> "(a) Effect. * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Warren v. Keep, 155 U. S. 265.

(a) The agreement between C. K. Eddy & Sons and Lila Eddy Doebler, dated March 11, 1920, was honestly, fairly and uprightly made and entered into while Lila Eddy Doebler was of sound mind, for a valuable consideration.

(1) The stock was not misrepresented as to amount.

The history of the stock is set forth in the record (140 *et seq.)* and on page 141 the first certificate (No. 6) issued to Lila Eddy, July 22, 1893, for 5,000 shares, is set forth. This is the original certificate issued at the time of the formation of the corporation. It was later endorsed to Walter S. Eddy about the time of the divorce proceedings between Lila Eddy Mills (Doebler) and Merrill B. Mills. It purported to have been transferred to W. S. Eddy by authority of the agreement of January 30, 1908.

From certificate No. 13 (R. 143) Lila Eddy received one-fourth, or 500 shares; by certificate No. 14, 500 shares; and by certificate No. 15, 250 shares. She then had 6,250 shares, after the death of her brother, Kirke. (5,000 shares original—1,250 shares from Kirke's estate.) Certificates 13, 14 and 15 were surrendered and certificate No. 19 for 1,250 shares was issued to her (R. 144). It was assigned to W. S. Eddy pursuant to the agreement of January 30, 1908.

Certificate No. 2 for 5,000 shares issued to Charles K. Eddy on July 22, 1893, was endorsed "Estate of Charles K. Eddy" and transferred to W. S. Eddy on January 15, 1907.

Because Kirke Eddy had died previously, Kirke Eddy's stock, 5,000 shares, was divided equally among the other stockholders, and Charles K. Eddy, the father, had received 1,250 shares from him, which was to be distributed one-half to W. S. Eddy and one-fourth to Lila and one-fourth to Arthur, and therefore Lila received 312½ shares, Arthur 312½ shares, and Walter 625 shares. The division of Kirke Eddy's stock is found at the bottom of page 143; of Mr. Charles K. Eddy's 1,250 shares at the top of page 144 and middle of page 146.

Lila therefore had:

Her original 5,000 shares
1,250 shares from Kirke
1,250 shares from her father's original estate; and
312½ shares from her father's share of Kirke's stock.

This added up equals .....7,812½ shares. That this amount is correct is shown not only from the stock certificates, but also on page 158, Mr. W. S. Eddy in his letter directing the corporation to take over the contract states that Lila Eddy McCurdy (Doebler) sold her 6,250 shares of the capital stock of C. K. Eddy & Sons held by her, together with 1,562½ shares of stock inherited by her under the will of Charles K. Eddy, deceased, which, added up, makes 7,812½ shares of stock (R. 158).

In Mrs. Doebler's letters to her brother, Arthur, she states that she sold Walter S. Eddy 7,812½ shares (R. 264), so there can be no question but that the amount

of stock that Mrs. Doebler (then Mrs. McCurdy) had in 1908 was 7,812½ shares, and that she sold that amount to W. S. Eddy (R. 159).

There can be no question but that Walter S. Eddy, at the time of his death, had 9,375 shares. He acquired it as follows:

5,000 shares, originally (R. 141) (Certificate No. 3).
1,250 shares from the estate of Kirke Eddy (R. 143, bottom of page) (Certificates Nos. 13, 14, 15, 17).
2,500 shares, one-half of his father's original 5,000 shares (Certificates 2, 16, 23).
625 shares, one-half of his father's share of Kirke's stock (16, 23).

9,375 shares.

This appears by certificates Nos. 2, 16 and 23, No. 2 being the original 5,000 shares of Charles K. Eddy (one-half of which went to Walter S. Eddy); No. 16 being the 1,250 shares of Kirke Eddy's stock which went to Charles K. Eddy (one-half of which went to Walter Eddy, or 625 shares) (reissued by No. 23), and Walter also obtained from Kirke Eddy's estate 1,250 shares, as shown by certificates Nos. 13, 14, 15 and 17. The additional stock standing in his name was held subject to the terms of the letter of February 6, 1914 (R. 158), and eventually certificate No. 31 was issued (R. 147). The account (R. 283) was carried on the books of the company until the transaction was finally completed December 30, 1922 (R. 283).

That Walter S. Eddy had 9,375 shares is also shown by the inventory in his estate (R. 43). Up to March 11,

1920, Arthur D. Eddy had the remaining one-quarter, the same amount sold by his sister, Lila, 7,812½ shares.

In the memorandum of agreement of March 11, 1920, the entire transaction is set out (R. 35) and the amount of shares which Lila had are stated to be 7,812½ shares, and that she had sold them to Walter, who transferred them to C. K. Eddy & Sons (R. 35). So that up to March 11, 1920, there can be no question about the amount of stock that each one held. It is all contained in the agreement of that date, which was signed by Mrs. Doebler, in the presence of her husband and her lawyer, and after they had examined into the value of the property and assets of C. K. Eddy & Sons and of Walter S. Eddy, and examined the figures secured (R. 254).

Then, on March 11, 1920, C. K. Eddy & Sons bought the one-half interest that Lila had in the 9,375 shares of stock owned by Walter S. Eddy at his death (R. 36, paragraph 7 (a)). One-half of 9,375 shares is 4,687½ shares, and that is what the corporation bought and retired:

Certificate No. 31, for 7,812½ shares, issued to C. K. Eddy & Sons, December 31, 1919, transferred from W. S. Eddy, who had purchased it in 1908 from Lila Eddy Doebler; Cert. Nos. 23, 20, 24, 27.

Certificate No. 35, for 4,687½ shares, issued to C. K. Eddy & Sons, transferred from Walter S. Eddy, assigned by Lila Eddy Doebler (169). Certificate Nos. 30, 22, 23.

These certificates, Nos. 31 and 35, total 12,500 shares of stock, are in the possession of C. K. Eddy & Sons

(R. 169) and are treasury stock (R. 154). The whole transaction was carried on the books of C. K. Eddy & Sons, and is found in the record in Exhibit 49, pages 281 and 282, and Exhibit 50, page 283.

After the purchase consummated March 11, 1920, Arthur D. Eddy owned 12,500 shares of stock in C. K. Eddy & Sons; that is, he had, besides his

Original 5,000 shares,
1,250 shares from Kirke,
1,250 shares from his father (R. 144) and
312½ shares of Kirke's which went to his father, and he (R. 143, 146) received one-half of Walter's, or
4,687½ shares (Cert. No. 34 (R. 147)),

making 12,500 shares.

The other 12,500 is treasury stock, evidenced by the two certificates to C. K. Eddy & Sons, Nos. 31 and 35 (R. 169).

The court summarized the testimony with respect to the holding of stock at page 168, and ended all claim that the stock was misrepresented as to amount.

(2) Mrs. Doebler was no invalid on March 11, 1920, at the time she executed the agreement.

Mrs. Doebler's letters to Mr. Arthur Eddy, commencing at page 249, to page 271, effectively answer any claim that there was anything wrong with her. These

letters show her to be a woman of superior business intelligence, with unusual capacity for detail, and having acute understanding.

Mrs. Doebler's will was dated February 19, 1935, and was admitted to probate in the state of Maryland (R. 5). In 1925, she created a trust with the Mercantile Trust Company of Baltimore (R. 350).

On March 11, 1920, she executed the agreement with C. K. Eddy & Sons, in the presence of her husband and her lawyer (R. 240), and that lawyer, J. LeRoy Hopkins, represented her in this litigation (Exhibit 233, page 1040, Vol. 2, No. 8366) up to the time of his death in January, 1938.

(3) The consideration for the 1920 agreement was adequate.

The stock of Walter S. Eddy was inventoried at $1,406,250 (R. 43). This appraisal was made by two disinterested appraisers appointed by the probate court, Mr. George B. Morley and Mr. Arnold Boutell. What proof is there for the claim by the petitioners' counsel that this appraisal was fraudulent? The record shows there is none. Mrs. Doebler made no criticism of it in her lifetime. No one else but counsel has ever even claimed it was fraudulent, and he has no proof. Mrs. Doebler inherited one-half of Walter's 9,375 shares of the stock, and the right (under the 1908 agreement) to an annuity of $15,000 a year as long as she lived. Her interest was worth approximately $703,000.00 (½ inventory price), less one-half of the estate tax, the Mich-

igan inheritance tax, administration expenses (one-half of which amount to (R. 283) approximately $100,000.00), leaving her interest worth approximately $600,000.00. She received securities of the par value of $800,000.00 for one-half of Walter's stock (R. 223) and the balance of her annuity, and was saved the expenses. Her interests were worth substantially the same amount based on the book value of the stock and based upon what an annuity of that character at that time was worth. Further than this, she received the safe, gilt-edged investments of the corporation (R. 253). The value of W. S. Eddy's stock was affected by the payment of the annuity, and there is a difference in economic values between August, 1918, with the war going on, and March 11, 1920. She acknowledges in her letter of September 23, 1919, that she was getting the perfectly safe investments (R. 253), and that C. K. Eddy & Sons retained the securities which might fluctuate in value and which had the element of chance.

Mrs. Doebler took into consideration the appraisal in the probate court, as she said in her letter of September 23, 1919 (R. 254):

> "If, however, we approach the matter from the standpoint of what has actually taken place, we find that I have an annuity of $15,000, which would capitalize at approximately $200,000, in addition to which I have the one-half interest in the stock held by Walter, which at the appraised value is worth $700,000; and if we add to this my one-half interest in the balance of his estate, approximately $20,000, and the $36,000 which C. K. Eddy & Sons owes me, my total figure on this basis would amount to $956,000.00, but this figure is unreasonably low because the appraised value of Walter's stock is much lower than its actual value as worked out from the fig-

ures secured by Valentine and Mr. Hopkins; and in addition to this, it must be taken into consideration that interest and earnings have been accruing since Walter's death, which would raise this figure to more than a million dollars."

Mrs. Doebler received approximately one million dollars up to March 11, 1920, for the one-fifth interest originally given her and for her share of her father's and brothers' estates,—all of this money coming out of the corporation, C. K. Eddy & Sons. She had left Saginaw in 1899 (R. 353), and, as Mr. Arthur D. Eddy said in one of his letters, she contributed nothing to the upbuilding of C. K. Eddy & Sons (R. 267).

Upon Arthur Eddy's death he left her one-third of the income from his estate (pages 9 and 10, paragraph ninth (e), Vol. I, No. 8366), and she received $377,-484.99 more between 1925 and 1938 (Exhibit 12, page 915, Vol. II, No. 8366). She was satisfied. Upon her death her only daughter received one-sixth of Mr. Eddy's stock, Mr. Eddy's widow had received one-third, and one-half was left to charity (page 6, Vol. I, No. 8366).

(b) The agreement between Walter S. Eddy and Lila Eddy McCurdy (later Doebler), of date January 30, 1908, was honestly, fairly and uprightly made and entered into while she was of sound mind, for a valuable consideration.

(1) The amount of her stock was not misrepresented.

Lila Eddy Doebler, on January 30, 1908, sold 7,812½ shares of stock in C. K. Eddy & Sons, which she had

acquired, as before pointed out, from her father and her brother, Kirke, by gift and inheritance. This agreement is set forth at pages 53 to 55 of the record. It was signed in the presence of Lila Eddy McCurdy's then husband, John T. McCurdy, an attorney at law, and of P. Glynn (R. 55). Mr. McCurdy further certified that he was advised of the contents of the agreement, and consented to the settlement therein provided for, and to the making and execution of the agreement. The stock was transferred to Mr. Walter S. Eddy in accordance with the agreement, although some of the stock had been previously standing in his name (R. 141-142).

Lila Eddy Mills had become Lila Eddy McCurdy about the first of 1908 (R. 65), having been divorced about 1907 from Merrill B. Mills, her first husband (R. 139).

Her letters (R. 250-271) shows that she fully comprehended all the details of the transaction. Finally, on March 11, 1920, she again ratified and confirmed the agreement (R. 23, 235).

(2) She was no invalid then.

There is no such claim made. She divorced Mr. McCurdy, married Mr. Doebler (R. 216), made a trip to Paris (R. 271-272), made a will which was admitted to probate (R. 5), and transacted her affairs from 1908 until shortly before her death in 1938 (R. 273-274, 350).

(3) The consideration for the agreement of 1908 was adequate.

The book value of C. K. Eddy & Sons on January 1, 1908, was (R. 340) $1,478,481.50. Her share of that was 31 per cent (R. 116), or $458,329.26. In 1908 her annuity was worth $359,000.00 (R. 348). She received approximately $38,000 with which to pay her bills, and $10,000 to buy her house (R. 67), making all together approximately $407,000.00 consideration for her sale. If she lived longer than the average woman of her age, she would receive more than $407,000.00. If she did not live as long as the average woman, she would receive less than $407,000.00. As a matter of fact, the annuity of $15,000 a year guaranteed her by her brother Walter S. Eddy paid her $458,715.10. This is just a few hundred dollars more than her interest in the corporation C. K. Eddy & Sons was worth in 1908.

During all of those years she had the personal guaranty of her brother Walter that whether C. K. Eddy & Sons made or lost money, she would receive every year $15,000.00 (R. 54). The consideration was adequate.

CONCLUSION.

There is ample evidence to support the findings of fact by the District Court.

The petition for the writ of certiorari should be denied.

Respectfully submitted,

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